

## REMARKS

This Paper is filed in response to the Office Action mailed December 19, 2005 having a shortened statutory response period ending on March 19, 2006. This Paper is filed within the shortened response period. The Commissioner is hereby authorized to charge any additional fees to Deposit Account No. 02-1818.

Attorney for Applicants would like to thank Examiner Pascua for the courtesies extended during a telephone conversation on February 28, 2006. In this conversation, Attorney for Applicants indicated that an Affidavit of William S. Hurst under 37 C.F.R. §1.132 (*Hurst Affidavit*) accompanied Applicants' *Response to Office Action* submitted on October 19, 2005. This is apparent as a USPTO Artifact Sheet dated October 21, 2005 (a copy of which is provided at Tab A) identified the *Hurst Affidavit*. However, the *Hurst Affidavit* was not scanned and placed into the record by USPTO personnel. Consequently, the *Hurst Affidavit* was not considered by Examiner Pascua with the submitted *Response to Office Action*.

With this Request for Reconsideration, Applicants hereby re-submit Applicants' *Response to Office Action* submitted on October 19, 2005 (at Tab B with a color copy of the *Hurst Affidavit*) along with a black and white copy of the *Hurst Affidavit* (Tab C).

Respectfully submitted,

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BY 

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Dated: March 3, 2006

## ARTIFACT SHEET

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<input type="checkbox"/>	Other, description: <u>Affidavit</u>
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Sidney Smith et al.  
Appl. No.: 09/813,351  
Conf. No.: 3473  
Filed: March 19, 2001  
Title: LARGE VOLUME FLEXIBLE CONTAINER  
Art Unit: 3727  
Examiner: Jes F. Pascua  
Docket No.: CRTS-5679 (0112713-968)

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO OFFICE ACTION**

Sir:

In response to the Office Action dated April 29, 2005, please find the following:

**A Listing of the Claims** is set forth on page 2 of this paper.

**Remarks** begin on page 8 of this paper.

**Listing of Claims:**

Claim 1 (canceled)

Claim 2 (previously presented): The container of claim 17 wherein the panels form a polygonal sleeve.

Claims 3-5 (canceled)

Claim 6 (previously presented): The container of claim 17 wherein the plurality of panels comprises four panels cooperatively forming a sleeve having a generally rectangular cross-section.

Claim 7 (original): The container of claim 6 wherein two opposing panels are gusseted panels.

Claim 8 (original): The container of claim 7 wherein the gusseted panels have a gusset fold.

Claims 9-11 (canceled)

Claim 12 (previously presented): The container of claim 17 wherein the end segments converge to a line.

Claim 13 (canceled)

Claim 14 (previously presented): The container of claim 17 wherein one of the panels has a port.

Claim 15 (previously presented): The container of claim 14 wherein the port has a port closure in sterile communication with the port, the port closure providing sterile access to the container interior.

Claim 16 (canceled)

Claim 17 (currently amended): A flexible container composed of a polymeric material for holding at least 200L of fluid comprising:

a plurality of panels, each panel having a peripheral edge, an end, and an end segment extending from the end, the end segment having a tapered peripheral edge extending from a corresponding peripheral edge and forming an angle therebetween, the plurality of panels joined together along the peripheral edges to form a sleeve, the panels each having a fold line that cooperate to define an imaginary plane at one end of the sleeve;

an end panel composed of the plurality of end segments folded at the fold line and sealed to each other along the tapered peripheral edges, at least one angle having a range from  $135.01^{\circ}$  to about  $138^{\circ}$  and forming at least one end segment with an additional amount of material which permits at least a portion of the end panel to extend outwardly from the sleeve beyond the imaginary plane when the container is filled ~~first end panel is in an unfolded position~~; and

a second end panel formed at another end of the sleeve to form a closed flexible container.

Claim 18 (currently amended): The container of claim 17 wherein the panels each have a second end and a second end segment extending from each second end, each second end segment having a tapered peripheral edge extending from a corresponding peripheral edge and forming an angle therebetween, the panels each having a second fold line that cooperate to define a second imaginary plane at the second end of the sleeve, the second end panel composed of the plurality of the second end segments, folded at the fold line and sealed to each other along the tapered peripheral edges, at least a second angle having a range from  $135.01^{\circ}$  to about  $138^{\circ}$  and forming at least one second end segment with an additional amount of material which permits at least a portion of the second end panel to extend outwardly from the sleeve beyond the second imaginary plane when the container is filled.

Claim 19 (previously presented): The container of claim 17 further comprising first and second opposing side panels wherein the first and second opposing panels are folded on top of themselves when the flexible container is in a folded position.

Claim 20-21 (canceled)

Claim 22 (previously presented): The container of claim 17 wherein the at least one angle is in the range from about 135.5° to about 136.5°.

Claim 23 (previously presented): The container of claim 17 wherein the at least one angle is 136°.

Claim 24-28 (canceled)

Claim 29 (previously presented): The flexible container of claim 17, further comprising a plurality of spaced-apart hanger connection locations at a top side of the flexible container, the hanger connection locations positioned inward from an outer edge of the top side.

Claim 30 (previously presented): The flexible container of claim 17, wherein the end panel extending outwardly beyond the imaginary plane is a bottom side of the flexible container.

Claim 31 (previously presented): The flexible container of claim 17, wherein the first end panel extending outwardly beyond the imaginary plane has a generally vertical orientation.

Claims 32-35 (canceled)

Claim 36 (previously presented): The container of claim 15 wherein the port closure further comprises a communication member having an end attached to the port.

Claim 37 (previously presented): The container of claim 36 wherein the communication member has a length of about six feet to about 30 feet.

Claim 38 (previously presented): The container of claim 36 further comprising a stop member attached to a second end of the communication member.

Claim 39 (previously presented): The container of claim 38 wherein the stop member is a gas permeable, sterile barrier.

Claim 40 (previously presented): The container of claim 39 wherein the barrier prevents fluid from passing into the communication member.

Claim 41 (previously presented): The container of claim 38 further comprising a cover member.

Claim 42 (previously presented): The container of claim 41 wherein the cover member covers the stop member and a portion of the second end of the communication member.

Claim 43 (previously presented): The container of claim 15 further comprising a second port and a vent closure in sterile communication with the second port.

Claim 44 (previously presented): The container of claim 43 wherein the vent closure further comprises a vent tube having an end attached to the second port.

Claim 45 (previously presented): The container of claim 44 wherein the vent closure further comprises a vent plug attached to a second end of the vent tube.

Claim 46 (previously presented): The container of claim 45 wherein the vent plug is a gas permeable sterile barrier to the vent tube.

Claim 47 (previously presented): The container of claim 46 wherein the vent plug equalizes the internal and external container pressure.

Claim 48 (previously presented): The container of claim 47 wherein the vent plug permits complete filling of the container.

Claim 49 (previously presented): The container of claim 48 further comprising a vent valve disposed within said vent tube.

Claim 50 (canceled)

Claim 51 (previously presented): The container of claim 17 further comprising a plurality of spaced-apart hanger connectors on a top panel of the plurality of panels, the hanger connectors being located between a center of the top panel and an outer perimeter edge of the top panel.

Claim 52 (previously presented): The container of claim 17 wherein the entire end panel extends beyond the imaginary plane.

Claim 53 (previously presented): The container of claim 18 wherein the entire second end panel extends beyond the second imaginary plane.

Claim 54 (previously presented): The container of claim 18 wherein each end segment has opposing tapered peripheral edges.



Claim 55 (previously presented): The container of claim 18 wherein the at least second angle is in the range from about  $135.5^{\circ}$  to about  $136.5^{\circ}$ .

Claim 56 (previously presented): The container of claim 18 wherein the at least second angle is  $136^{\circ}$ .

**REMARKS**

This Paper and Petition for a three month Extension of Time are filed in response to the Office Action mailed April 29, 2005 having a shortened statutory response period that ended on July 29, 2005. This response is filed within three months of the shortened response period, namely October 29, 2005. The Commissioner is hereby authorized to charge any additional fees to Deposit Account No. 02-1818.

The indication of allowable subject matter in claims 39-42 and 45-49 is noted with appreciation. Attorney for Applicants would also like to thank Examiner Pascua for the courtesies extended during a telephone conversation on July 25, 2005.

Claims 2, 6-8, 12, 14-15, 17-19, 22, 28, 30, 31, and 52-55 were rejected under 35 U.S.C. §102(b) for allegedly being anticipated by *Vallot*. Claims 2, 6-8, 12, 14-15, 17-19, 22, 23, 30, 31, 36-38, 43-44, and 52-56 were rejected under 35 U.S.C. §103(a) as for allegedly being obvious in view of *Vallot*. Claims 29 and 51 were rejected under 35 U.S.C. §103(a) as being obvious over *Vallot* in view of U.S. Patent No. 5,788,121 to Sasaki et al. (*Sasaki*). Claims 24-28 have been canceled. Applicants respectfully traverse these rejections as *Vallot* and *Sasaki*, fail to teach or suggest the subject matter recited in the present claims.

*1. Vallot Fails to Disclose an Angle Range of 135.01° to 138° With Sufficient Specificity*

*Vallot* fails to disclose the recited angle range of 135.01° to 138° with sufficient specificity. The MPEP is clear that when a reference 1) discloses a broad range that overlaps a claimed range yet 2) fails to provide a specific example within the claimed range, and 3) evidence exists of unexpected results within the claimed narrow range, the narrow range is not disclosed with "sufficient specificity" to constitute an anticipation of the claims. MPEP § 2131.03. *Vallot* discloses a sachet with an end panel having a broad angle range of 30°-60° (which translates to 120°-150° with respect to the present claim language) between the panel peripheral edge and an end segment tapered edge. *Vallot*, col. 3 lines 9-11, col. 4 lines 33 through 37, col. 5 lines 53-55. However, as discussed in

detail below, *Vallot* fails to provide a single example of a container having an angle range of 135.01° to 138°. Moreover, Applicants have provided evidence of unexpected results for a container having the claimed range of 135.01° to 138°. Applicants respectfully request that the Examiner evaluate this application according to the “case by case” review standard as set forth in MPEP § 2131.03.

a. *Vallot Fails to Provide an Example Within the Claimed Angle Range of 135.01°-138°*

*Vallot* discloses a sachet with an end panel having an angle range of 30°-60° (which translates to 120°-150° with respect to the present claim language) between the panel peripheral edge and an end segment tapered edge. *Vallot*, col. 3 lines 9-11, col. 4 lines 33 through 37, col. 5 lines 53-55. *Vallot* further discloses that the filled sachet has a parallelepiped shape and conforms exactly to the geometry of a rigid support container. *Vallot*, col. 2 lines 1-8, col. 5 lines 50-55. However, containers within *Vallot*'s angle range of 30°-60° (120°-150°) fail to conform exactly to the geometry of the rigid support container. A container with an angle of 120° (30°) does not conform exactly to the support container geometry and is unworkable. See Affidavit of William S. Hurst (hereinafter *Hurst Affidavit*) at ¶¶ 3-9 set forth at Tab 1. Similarly, a container with an angle of 150° (60°) also does not conform exactly to the support container geometry and likewise is unusable. *Id.* Thus, the skilled artisan would realize that *Vallot*'s broad angle range of 30°-60° (120°-150°) fails to teach or suggest the narrow angle range of 135.01°-138° particularly in view of the nonworkable containers provided in *Vallot*'s broad angle range. *Hurst Affidavit*, ¶ 9.

In addition, *Vallot* fails to provide a single example of a container having the claimed angle range of 135.01° to 138°. Rather, *Vallot* is replete with numerous statements directed to a container having an angle of 45° (135°), a container that is a parallelepiped shape when filled, and a container having a bottom face and a top face that are parallel to each other. *Vallot*, abstract, col. 1 line 66 through col. 2 line 5, col. 3 lines

9-15, col. 4 lines 33-38, col. 5 lines 55-60, FIG. 2. These numerous statements clearly indicate to one of ordinary skill in the art that the parallelepiped *Vallot* container has an angle of  $45^\circ$ , with top and bottom faces that are parallel to each other. *Hurst Affidavit*, ¶ 9-10; *see also* Affidavit of Sidney T. Smith (hereinafter *Smith Affidavit*) at ¶¶ 6-7 set forth at Tab 2. Consequently, *Vallot* lacks an example of a container having an angle in the recited range of  $135.01^\circ$  to  $138^\circ$ . As *Vallot's* broad angle range of  $30^\circ$ - $60^\circ$  ( $120^\circ$ - $150^\circ$ ) includes nonworkable containers, and *Vallot* fails to provide a single example of a container within the claimed angle range of  $135.01^\circ$  to  $138^\circ$ , *Vallot* fails to disclose the claimed angle range with sufficient specificity. Applicants respectfully submit that *Vallot* and is non-anticipatory art in accordance with MPEP § 2131.03.

*b. The Recited Angle Range of  $135.01^\circ$ - $138^\circ$  Yields Unexpected Results*

The claimed container with an angle range of  $135.01^\circ$  to  $138^\circ$  yields unexpected results. The angle range of  $135.01^\circ$  to  $138^\circ$  surprisingly and unexpectedly provides for full support of the flexible container while minimizing wrinkling. *Hurst Affidavit* at ¶ 11, *Smith Affidavit* at ¶¶ 4-5. The parallelepiped container of *Vallot* fails to adequately address the problem of full support within the support container. *Hurst Affidavit* at ¶ 7. *Vallot* fails to appreciate the problems associated with wrinkling. *Vallot* has no teaching or suggestion directed to a large volume flexible container having the unexpected results of i) rupture resistant end panels and ii) a wrinkle-free container that occur as a result of the angle range of  $135.01^\circ$  to  $138^\circ$  as recited in the present claims. As *Vallot's* broad angle range includes nonworkable containers, *Vallot* fails to provide a specific example of a container having an angle within the range of  $135.01$ - $138$ , and the present container demonstrates unexpected results, *Vallot* fails to teach or suggest the subject matter recited in the present claims.

*Sasaki* fails to fulfill the deficiencies of *Vallot*. In contrast, *Sasaki* teaches away from the recited 200L container as *Sasaki* discloses bags having a volume of 5-20L.

*Sasaki*, col. 11 lines 44-47. Moreover, the skilled artisan would appreciate that the design requirements for a flexible container for containing at least 200L of fluid are unique when compared to flexible containers for smaller volumes. *See Smith Affidavit* at ¶ 3. In addition, *Sasaki* has no disclosure whatsoever directed to a flexible container having end segments with tapered peripheral edges.

### CONCLUSION

For the foregoing reasons, Applicants respectfully submit that the claims are in a condition for allowance and request early notification of the same.

Respectfully submitted,

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Dated: October 19, 2005